IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

OP.No. 9480 of 1998(C)

PETITIONER:

PATSPIN INDIA LIMITED,
PALAL TOWERS,
M.G.ROAD,
COCHIN 682 016
REPRESENTED BY ITS DIRECTOR
SRI.P.C.SEKSARIA.

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
SRI.SAJI VARGHESE

RESPONDENTS:
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1. THE SPECIAL OFFICER (REVENUE)
KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVAN,
PATTOM,
TRIVANDRUM – 4.

2. THE KERALA STATE ELECTRICITY BOARD,
VYDHYTHI BHAVAN,
PATTOM,
TRIVANDRUM – 4,
REPRESENTED BY ITS CHAIRMAN.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB
SRI.R.K.VENU NAYAR, SC, KSEB
SRI.P.SANTHALINGAM, SC, KSEB

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF ORDER DATED 6.2.92 ISSUED BY THE GOVERNMENT OF KERALA.
EXT.P2	TRUE COPY OF THE ORDER DATED 27.3.92 ISSUED BY THE SECOND RESPONDENT, KSE BOARD.
EXT.P3	TRUE COPY OF ORDER DATED -11-94 ISSUED BY THE SECOND RESPONDENT.
EXT.P4	TRUE COPY OF THE ORDER DATED 23.9.97 ISSUED BY THE SECOND RESPONDENT.
EXT.P5	TRUE COPY OF THE ORDER DATED 11.12.97 ISSUED BY THE GOVERNMENT OF KERALA.
EXT.P5(a)	TRUE COPY OF THE ORDER DATED 12.12.97 ISSUED BY THE SECOND RESPONDENT.
EXT.P6	TRUE COPY OF THE NOTIFICATION DATED 29.1.1997.
EXT.P7	TRUE COPY OF INVOICE DATED 12,.1.1998 ISSUED BY THE RESPONDENT BOARD.
EXT.P8	TRUE COPY OF INVOICE DATED 12.1.98 FOR THE MONTH OF DECEMBER, 1997.
EXT.P9	TRUE COPY OF INVOICE DATED 9.2.1998 FOR THE MONTH OF JANUARY 1998.
EXT.P10	TRUE COPY OF INVOICE DATED 10.2.1998 FOR THE MONTH OF JANUARY 1998.
EXT.P11	TRUE COPY OF LETTER DATED 21.2.1998 ADDRESSED TO THE CHAIRMAN, KSE BOARD, TRIVANDRUM BY THE PETITIONER.
EXT.P12	TRUE COPY OF LETTER DATED 30.4.1998 TO THE FIRST RESPONDENT BY THE PETITIONER.
EXT.P13	TRUE COPY OF LETTER DATED 18.5.1998 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

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H.L.DATTU, C.J. & K.T.SANKARAN,J.

O.P. NO. 9480 OF 1998 C

Dated this the 25th September, 2007

JUDGMENT

H.L.DATTU, C.J.

Petitioner is a company incorporated under the provisions of the Companies Act. It is engaged in the manufacture of 100% cotton yarn at its factories situated in Kanjikode in Palakkad District. It is stated in the petition that in view of the incentives offered by the State Government for setting up of new industries/small scale industries, the petitioner undertook to set up its cotton yarn manufacturing units at Kanjikode by making huge investments.

2. The petitioner has two industrial units. The first unit is called "Patspin Unit 'A'" , wherein the petitioner has made an investment of Rs.56 crores, and the second unit is called "Patspin Unit 'B'", wherein the petitioner has made an investment of nearly Rs.45 crores.

3. The State Government has issued a Government Order, G.O.(MS) NO.4/92/PD dated 6th February, 1992, granting concessional power tariff and electricity duty to new industrial units as a measure of incentive pursuant to liberalisation of industrial policy. In the said Government Order, it is stated that the new industrial units will be exempted for a period of five years from payment of enhanced power tariff which has come into effect on 1.1.1992. In the said Government Order, the Government has also stipulated several other conditions and those conditions need not be referred by us for the purpose of disposal of this Original Petition.

4. The orders passed by the State Government granting concessional power tariff to the new industrial units was adopted by the Kerala State Electricity

Board ('the Board' for short) by issuing a notification/order, B.O.No.559/92/plgcom dated 27th March, 1992. The said notification/order is in consonance with the Government Order dated 6th February, 1992.

5. Pursuant to the aforesaid order of the Board, the petitioner had approached the Board for granting concessional rate of tariff to the power supplied to their new industrial units, Platspin Unit 'A' and 'B'. The Board had passed an order in the month of November, 1994, wherein they have stated that the petitioner industrial unit will be charged at the pre '92 concessional rate of tariff for the supply of electricity for a period of five years from 1.4.1994 to 31.3.1999. The order passed by the Board to the petitioner's industrial unit Patspin Unit 'A' is extracted and it reads as under:

> "Therefore, it is hereby ordered that M/s.Patspin India Limited, Para Road, Kanjikode with Industrial License No.K.LI.EOB:11(91) EO.355 (90) IL.23-1-1991 will be charged at the Pre'92 concessional rates of tariff for the supply of electricity for a period of five years from 1.4.1994 to 31.3.1999."

6. In so far as the petitioner's new industrial unit Patspin 'B' is concerned, a similar order has been passed by the Board by its order dated 23rd September, 1997. The order passed in this regard is as under:

> "As per the Board Order read as above and the Certificate issued by the Director, KSIDC Limited, Thiruvananthapuram, M/s.Patspin India Limited 'B' Unit, Kanjikode, Palakkad with Reg. No. PER;85/1996/EDB/224/95/12.02.96 is eligible for Pre'92 Concessional Tariff for 5 years from 28.12.96 to 27.12.2001. It is, therefore, ordered that M/s.Patspin India Limited 'B' Unit, Kanjikode, Palakkad will be charged at Pre '92 Concessional Power Tariff for the supply of electricity for a period of 5 years from 28.12.96 to 27.12.2001.
>
> The excess if any that will acrue due to revision of

> the invoices already issued, based on this Order will be adjusted from future invoices and will not bear any interest. The Penal Interest already remitted for the belated payment of invoice amount will not be refunded."

7. Due to shortage of power, the State Government had imposed 30% power cut for all the industrial units, including the petitioner's 'A' and 'B' industrial units. The said 30% power cut came to be withdrawn by the State Government by its order dated 11th December, 1997. The order so passed by the State Government was again adopted by the Board by its order dated 12th December, 1997. The said order is produced along with the Original Petition docket as Ext.P5(a). At paragraph 3 of Ext.P5(a) order, the Board has stated as under:

> "3. Assuming that KSE Board will get power to the extent indicated above from the Eastern Regional Electricity Board, the Kerala State Electricity Board hereby orders that 30% power cut now in force on HT/EHT consumers shall be withdrawn from 0800 hrs on 15.12.1997 subject to the following conditions:-
>
> (i) Out of the total monthly consumption, the first 30% consumption of the HT and EHT consumers will be charged at the rate to be determined after finalisation of the rate, terms and conditions of the power proposed to be purchased from the Eastern Region. The rates and the date from which these rates will be made applicable will be announced later by the KSE Board. However, the date from which this rate will be made applicable will be from the date from which the Board purchases power from Eastern Regional Electricity Board. Until that date the billing will done as per the tariff notification of the Board applicable from time to time. This will be applicable to the manufacturing industries eligible for Pre-1992 tariff also."

8. The Board has issued Exts.P7, P8, P9 and P10 invoices/electricity bills, directing the petitioner to pay electricity charges at two different rates. One at the pre '92 concessional rate for 70% of the supply of electricity and the other at

Rs.1.22 per unit for the remaining 30% of the supply of electricity. Aggrieved by these demands for the months of December 1997 and January 1998, petitioner had filed representations before the Board and the same are produced as Exts.P11 and P12. Those representations have been answered by the Board by their letter dated 18th May, 1998, which is produced along with the writ petition docket as Ext.P13, wherein the Board has stated as under:

> "Sir,
>
> This has reference to the letters cited. This is to clarify that the Board has lifted power cut from 0800 hours of 15.12.97 not because it has sufficient power to supply to the consumers as they require. Moreover the power cut was lifted with certain specific conditions. Since the power from EREB was not purchased on the date of lifting the power cut, the order envisages that, the rate of the EREB current will be fixed from the date from which it is purchased and until then the billing will be done as per the tariff notification of the Board applicable from time to time. This condition is applicable to the manufacturing industries eligible for Pre-92 tariff also. Since the supply in the State before the drawal of EREB power has been maintained by over drawal of central share which attracts higher rate. A copy of the B.O.No.2785/97 dated 12.12.97 lifting the power cut and imposing certain conditions for the supply of power cut from 15.12.1997 till EREB power is made available to the consumer, has already been forwarded to you along with the (1) reference. The rate charged for the 30% consumption from 15.12.97 to 31.1.98 is the ruling tariff to which you are liable to pay as per the provisions of the above B.O.
>
> In this circumstances, I may request you to clear the dues for the months of 12/97 and 1/98 without failure. If the remittance are not been received in this office on or before 26.5.98, the service bearing consumer code 2662 will be disconnected without further notice."

9. Petitioner-industry is before us, inter alia, seeking the following reliefs:

> "a) call for the records and proceedings relating to Exts.P7,P8, P9, P10 and P13 and quash or set aside the same by the issue of a writ of certiorari or other

appropriate order;

b) issue a writ of mandamus or other appropriate writ, direction or order restraining the respondents from charging the petitioner at the higher rate applicable to high tension consumers on the 30% electricity consumed by the petitioner during the months of December 1997 and January 1998;

c) issue a writ of mandamus or other appropriate writ, direction or order restraining the respondents from taking any coercive action to disconnect the electricity supply pursuant to Ext.P13;

d) grant such interim and other reliefs as this Honourable Court may deem fit and proper in the circumstances of this case."

10. At the outset, we should notice that the petitioner-industry curiously does not question the correctness or otherwise of Ext.P5(a) order passed by the Board, dated 12th December, 1997.

11. Learned Senior Counsel, Sri.M.Pathros Matthai, would submit that in view of the orders passed by the Board in the month of November, 1994 and on 23.9.1997, the respondents could have charged only at the pre'92 concessional rate of tariff for the supply of electricity even for the months of December 1997 and January 1998 and since they have charged something more than what is prescribed under pre'92 concessional rate of tariff, the electricity bills so issued by the authorities of the Board is illegal and, therefore, require to be quashed by this Court.

12. In support of the aforesaid contention, the learned counsel has taken us through the orders passed by the Board, the representation filed by the petitioner and the reply given to them by the Board. Learned counsel would further submit that the action of the Board in demanding higher rates of tariff for

the supply of electricity for the months of December 1997 and January 1998 is arbitrary and illegal.

13. Sri. C.K.Karunakaran, learned counsel appearing for the Board would submit that the invoices/electricity bills issued by the Board for the months of December 1997 and January 1998 to the petitioner's new industrial units (Patspin 'A' and 'B' Units) are in accordance with Ext.P5(a) order passed by the Board, dated 12th December, 1997. It is further stated that since the petitioner has not questioned the correctness or otherwise of the said order, the petitioner is not entitled for any of the reliefs sought for in the Original Petition. Learned counsel would further submit that for 70% of the electricity supplied, the Board has charged at the pre'92 concessional rate of tariff and for the remaining 30%, they have charged at the rate of tariff which was in force during the months of December 1997 and January 1998. In justification of the demands so raised, the learned counsel heavily relies upon paragraph 3 of the order passed by the Board, dated 12.12.1997. Therefore, submits that the issue of invoices/electricity bills for the months of December 1997 and January 1998 by no stretch of imagination can be characterized as either arbitrary or illegal.

14. We reiterate that nowhere in the Original Petition the petitioner has called in question the correctness or otherwise of Ext.P5(a) order passed by the Board. Further, it is not the case of the petitioner before this Court that there was a promise made by the Board to the petitioner's industrial units that electricity will be supplied to them at the pre'92 concessional rate and that promise, by way of an order, is not yet withdrawn by the Board and, therefore, the Board is not justified in demanding from the petitioner a higher rate of tariff for supply of 30% of the

electricity for the months of December 1997 and January 1998. The doctrine of promissory estoppal not only requires to be pleaded but also requires to be urged and argued and in the absence of such a factual foundation in the pleadings, this Court is not expected to take that into consideration for the purpose of deciding the lis between the parties.

15. In the instant case, the Board does not dispute the issuance of two orders in the months of November 1994 and September 1997, informing the petitioner's 'A' and 'B' units that they would be charged at the pre'92 concessional rate of tariff for the supply of electricity for the periods from 1.4.1994 to 31.3.1998 and 28.12.1996 to 27.12.2001 respectively.

16. As we have already noticed there was acute shortage of electricity in the State of Kerala. Therefore, the State Government had issued several Government Orders in exercise of their powers under the provisions of the Indian Electricity Act, imposing power cut to the new industrial units/small scale industrial units etc. Later 30% of the power cut was withdrawn by the Government by its order dated 11.12.1997. The orders passed by the Government were adopted by the Board by its order dated 12.12.1997. The Board at paragraph 3 of its order dated 12.12.1997 has specifically stated that they would be charging the manufacturing industries eligible for pre'92 concessional rate of tariff, at the pre'92 concessional rate of tariff for 70% of electricity supplied and for the balance 30%, they would be charging at the rate as per the tariff notification issued by the Board from time to time.

17. Keeping in view the order passed by the Board, dated 12.12.1997, the Accounts Officer of the Board has issued invoices/electricity bills for the months of

December 1997 and January 1998. A perusal of the same would indicate that for 70% of the power supply made to the industrial units, the Board has charged only at the pre'92 concessional rate of tariff and for the remaining 30%, they have charged at the rate of Rs.1.22 per unit, that was the tariff during the period of December 1997 and January 1998. Since the petitioner has not questioned the correctness or otherwise of Ext.P5(a) order passed by the Board, petitioner cannot have any grievance in regard to the invoices/electricity bills issued by the Accounts Officer of the Board as the same is in consonance with the order passed by the Board, dated 12.12.1997. In view of the above, we cannot accept the contention of the learned counsel for the petitioner that the demand raised by the Board is either arbitrary or illegal. In view of the above, the Original Petition fails and accordingly it is rejected.

16. Consequently, C.M.P.No.16180 of 1998 is also rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/dk

H.L.DATTU , C.J. &
K.T.SANKARAN, J.

O.P.NO. 9480 OF 1998 C

JUDGMENT

25th September, 2007

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